DEQ

Leaking Underground Storage Tank Program Summary
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Part 213 of the Natural Resources and Environmental Protection Act (NREPA) is the state statute that regulates the cleanup of contamination resulting from leaking underground storage tanks. The DEQ welcomes the opportunity to talk with Legislators and program stakeholders about ways to assure that this program is effective in protecting the public health, safety, welfare, and the environment and meeting the needs of our customers. The DEQ is committed to providing leadership in environmental protection and stewardship; being a full partner in Michigan's economic recovery; and providing excellent customer service.

Current Program Statistics

- There are currently more than 9,000 releases from leaking underground storage tanks at approximately 7,200 sites where actions have not been taken to address contamination resulting from tank releases (leaks). These are referred to as "open releases."

- Of those open releases 56% are between 10 and 20 years old, and 21% are more than 20 years old. Only 2% are less than 2 years old. The fact that so many sites have gotten this old without cleanup is attributable to inadequate initial actions to control the spread of contamination.

- Approximately half of the 9,000 open releases are "orphan" (i.e., the liable party cannot be identified or is unable to pay for the necessary cleanup costs). DEQ estimates that it would cost approximately $1.5 billion to clean up these orphan sites.

- Approximately one-third of the known open releases are high risk (i.e., impacts to human or environmental receptors are occurring now and will continue to occur).

Regulatory Framework

Part 213 comes into play when a release (leak) occurs. The owner/operator who is responsible for that release is required to take the following steps:

1. Report the release to the DEQ within 24 hours of discovery.
2. Immediately take certain actions that include: stopping the release; addressing fire and explosion hazards; recovering free petroleum product (gasoline floating on the groundwater); and removing or treating visibly contaminated soils that could allow contamination to spread. This group of actions is referred to as "initial response actions."
3. Within 90 days, retain a consultant and prepare a report and submit that report to the DEQ to provide basic information about the site and the contamination, and provide a plan for developing the required cleanup actions. This is referred to as the Initial Assessment Report.

4. Within 365 days, submit a report that defines what actions will be taken to clean up contamination and/or control risks. This is referred to as a final assessment report (FAR) that includes a Corrective Action Plan (CAP).
5. Implement the cleanup plan according to the schedule provided in the FAR/CAP.
6. Submit a report to document that the cleanup is complete. This is referred to as a closure report.

Not all the steps in this sequence are necessary. For example, if closure is complete after the initial response actions, steps three through five can be omitted.

Important procedural aspects of the Part 213 program include the following:

- The tank owner/operator is required to use a consultant who has applied and been approved by DEQ as a Qualified Consultant (QC). At least one person who is approved as a Certified Professional (CP) must be employed by that firm to oversee leaking underground storage tank cleanup work and certify the reports and plans that are submitted to DEQ. This is often referred to as the "QC/CP" process.
- The DEQ is required to provide oversight of Part 213 work through an audit program. This means that the DEQ does not review or respond to all reports and plans that are submitted. Only a fraction of reports are audited. The DEQ selects reports for audit on the basis of the anticipated threats to public health and the environment that may be posed by the release, and the need to oversee a selection of work performed by all QCs and CPs to assure compliance with regulatory requirements. The audit program was put in place in early 1990s in recognition of the fact that DEQ did not have enough staff to review all the plans that were submitted.

This oversight role is in contrast to the way that review and oversight are provided under Part 201 of the NREPA, the statute that regulates the cleanup of all contaminated sites other than leaking underground storage tanks. Under Part 201, there is no QC/CP process, and review of all Response Activity Plans and No Further Action Reports by the DEQ is mandatory.

Program Funding

The Refined Petroleum Fund (RPF) is the primary funding source for the Leaking Underground Storage Tank program. Revenue for the RPF comes from a 7/8 cent per gallon fee imposed on refined petroleum products sold in Michigan. This fee generates approximately $51 million per year. The Fiscal Year 2011 appropriation provides approximately $21 million from the RPF to the leaking underground storage tank program to pay for orphan site cleanups and approximately $7 million for staff. Federal grant funding provides an additional $2.1 million.

Program Challenges

- *The DEQ cannot provide a desirable level of financial and/or technical assistance to leaking underground storage tank owner/operators.*

- *More than half of leaking underground storage tank owner/operators are out of compliance with requirements for responding to leaks from their tanks.*

- *Inadequate response to leaking tanks means that drinking water supplies are threatened, explosive and toxic vapors are uncontrolled, lakes and rivers are polluted, and other threats to the public health and safety remain unaddressed.* Failure to immediately respond to leaks when they occur allows contamination to spread and poses more risks, resulting in higher cost of cleanups.

- *The consequences of contamination in Michigan are more significant than in many other states;* groundwater that is vulnerable to contamination from leaking underground storage tanks serves as the source of drinking water for the majority of Michigan's population.

- *Current funding is insufficient to allow the state to respond to sites where tank owner/operators are unable to pay for necessary cleanup.*

- *The liability standards that apply to tank owner/operators are cumbersome to implement and result in approximately half of the sites being "orphan"* in part because the state cannot prove who is responsible for causing contamination when sites are owned and operated by a series of different people.

- *The existing regulatory system is inefficient in part because it is separate from the cleanup program for contaminated sites caused by other sources.*

The DEQ welcomes the Joint Committee's interest in this important program and we look forward to working with you and the program stakeholders to make this an effective and efficient program that protects the public health and environment. I would be happy to answer any questions.